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**THIS DISPOSITION
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Paper No. 9
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mastrantonio Holdings (Proprietary) Limited

Serial No. 75/530,347

Jess M. Collen of Collen Law Associates, PC for
Mastrantonio Holdings (Proprietary) Limited.

Dionne T. Cuevas-Abreau, Trademark Examining Attorney, Law
Office 111 (Craig D. Taylor, Managing Attorney).

Before Cissel, Hohein and Chapman, Administrative Trademark
Judges.

Opinion by Chapman, Administrative Trademark Judge:

On August 4, 1998 Mastrantonio Holdings (Proprietary)
Limited (a corporation of South Africa) filed an
application to register the mark MASTRANTONIO on the
Principal Register for "meat, fish, poultry and game;
preserved, dried and cooked fruits and vegetables; jellies,
jams, fruit sauces, eggs, milk, cream, edible oils and
fats" in International Class 29; "coffee, tea, cocoa,
sugar, rice, tapioca, sago, artificial coffee, flour,
cereal-based snack food, bread, pastry, candy, cakes,
flavored ice, honey, treacle, yeast, baking powder, salt,

mustard, vinegar, sauces, pepper, spices and ice" in International Class 30; "wholesale and retail stores in the field of catering and food production services, product merchandising services, import agencies" in International Class 35; and "delicatessens, cafes, cafeterias, restaurants, snack bars, coffee shops, catering, bar services, take-out restaurant services" in International Class 42." The application is based on applicant's assertion of a bona fide intention to use the mark "in commerce in or with the United States."

Registration has been finally refused under Section 2(e)(4) of the Trademark Act, 15 U.S.C. §1052(e)(4), on the basis that the term MASTRANTONIO is primarily merely a surname.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. No oral hearing was requested by applicant.

Applicant contends that MASTRANTONIO is a rare surname, and such term has meanings other than as a surname because the purchasing public would be aware that "the term can actually be broken into two parts, namely, the prefix 'MASTR' and the first name 'ANTONIO'. The term 'MASTR' is used in the Italian language as a sign of respect, and the name 'ANTONIO' is a recognized first name in Italian."

(Applicant's response to first Office action, unnumbered p. 4.)¹

The Examining Attorney contends that the primary significance of the term MASTRANTONIO to the purchasing public is that of a surname as evidenced by the 77 references found in Phonedisc, as well as by several excerpted stories from the Nexis database (7 out of 2514 stories), all indicating uses of a first name with the surname MASTRANTONIO; that MASTRANTONIO has no other meaning as evidenced by the lack of any entry of MASTRANTONIO in either the American Heritage Dictionary or Webster's New World Geographical Dictionary; that applicant's mark is not a rare surname, but even if it were, rare surnames may be unregistrable under the **Trademark Act** if, as here, the primary significance to purchasers remains that of a surname; and that the involved mark has the "look, sound and structure of a surname" (brief, p. 5). The Examining Attorney refutes applicant's argument about purchasers perceiving the mark in two separate parts, "MASTR" and "ANTONIO," as (i) unsupported by any evidence; and (ii) an improper dissecting of the

¹ Applicant specifically argues in its brief (unnumbered p. 3) that its mark may have equal significance as "MASTR ANTONIO (such as 'Mister' or 'Master' Antonio)."

mark in order "to arrive at a highly obscure non-surname meaning." (brief, p. 7.)

It is well established that the USPTO has the burden of establishing a prima facie case that a mark is primarily merely a surname, and that the test for determining whether a mark is primarily merely a surname is the primary significance of the mark as a whole to the purchasing public. See *In re BDH Two Inc.*, 26 USPQ2d 1556 (TTAB 1993), and cases cited therein. We are of the opinion that the Examining Attorney has met that burden here, and that applicant's arguments have failed to rebut the Office's prima facie case.

Although the Phonedisc listings of MASTRANTONIO are, as argued by applicant, a small fractional percentage of the entire Phonedisc database (115 million names, addresses, and phone numbers), even the surname SMITH would presumably also constitute only a small fractional percentage of the database. We note that one of the stories in the Nexis evidence submitted by the Examining Attorney includes a listing which refers to a movie star, Mary Elizabeth Mastrantonio starring in Brian DePalma's movie "Scarface." Also, the Nexis evidence includes references to individuals named MASTRANTONIO from various geographic areas, such as New York, Pittsburgh, Florida and

Tennessee. Based on the evidence, we find that the primary significance of this term to the purchasing public is that of a surname. Moreover, even if MASTRANTONIO is a rare surname, this does not mean that its surname significance would not be recognized by a substantial number of members of the general public.

Applicant argued but submitted no evidence (e.g., a page from an Italian-English English-Italian dictionary) that "MASTR" has a meaning in Italian.² Further, even if we accept applicant's statement (without proof) regarding the letters "MASTR," there is no evidence that Americans of Italian descent, for example, would run the terms 'MASTR' and 'ANTONIO' together, as applicant has done in its mark MASTRANTONIO.

The Examining Attorney did not inquire and applicant offers no information as to whether MASTRANTONIO is the surname of anyone connected with applicant. The signature of the individual who executed the application is not clearly legible. Therefore, there is no information of record on this point.

² Recognizing that the Board may take judicial notice of dictionary definitions (see TBMP §712.01 and cases cited therein), we note that Cassell's Italian-English English-Italian Dictionary (1967) reveals that there is no listing for "mastr" but that "mastro" is defined as "Master" or "ledger"; that the Italian word for "mister" is "Signore" or "Signor"; and the Italian word for "master" is "Maestro."

Finally, we consider the decidedly subjective factor of whether MASTRANTONIO has the "look and feel" of a surname. We conclude that it does. See *In re Industrie Pirelli*, 9 USPQ2d 1564 (TTAB 1988).

Decision: The refusal to register under Section 2(e)(4) is affirmed.